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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 26850 of 1998 and W.P.No.27496 of 1998

W.P.No.26850 of 1998:

Between:

Sponge Iron India Limited Employees union Represented by

its General Secretary Sri V.Sudhakar,S/o.V.Venkaiah,
Paloncha, Khammam District, R/o. SIIL Campus,
Paloncha, Khammam District.

..... PETITIONER

AND

1 Union Of India represented by Secretary, Ministry of Indistry, Department of Public Enterproses,14, Central Government offices Complex, Lodhi Road, New Delhi.
2 The Deputy Director (S), Department of pulic Enterproses,
14, Central Government offices Complex, Lodhi Road,
New Delhi.
3 The Commissioner of Labour, Government of Andhra pradesh, Department of Labour, Anjaiah bhavan,R.T.C. Cross Roads, Hyderabad.
4 The Chairman Cum Managing Director, Sponge Iron India Limited,

10-3-311/A, 6th Floor, Khanij Bhavan, Castle Hills,
Masab Tank, Hyderabad.
5 The General Manager (P & A), Sponge Iron India Limited,
SIIL Campus 507 154, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call fir records pertaining to proceedings contained in letter No. C3/6024/98, dated; 26-18-1998, issued by the Respondent No. 3 herein and consequential proceedings contained in Ref. No. S.I./Pers./9143/2021/98, dated: 10-09-1998, issued by the Respondent No. 5 Herein and set them aside as illegal, bad, irrational, illogical, discriminatory, arbitrary, without jurisdiction, on-application of mind , non-Speaking ,Null and void, violative of office Memos Dated; 19-07-1995, 26-07-1995, 26-07-1995 and 29-09-1995 besides being violative of Articles 14, 16 and 21 of the constitution of India and Consequently direct the Respondents herein to pay the Industrial Dearness Allowance to the members of the Petitioner union on par with other public sector Undertakings Such as B.E.L., H.A.L., etc., With all consequential benefits and attendant benefits by implementing the office Memos Contained in No. 2(50)/86-DPE (Wc), dated; 19-07-1995: No. 2(50)/86-DPE/Wc , dated: 26-07-1995; and No. 2(50)/86-DPE/(WC) , Dated: 29-09-1995, in true spirit and letter declaring the action of the Respondents No. 1 and 2 herein in not giving clear Clarification in the Matter of granting of Industrial Dearness Allowance by the Respondent company Vis-a-Vis Their Memos and further action of the Respondent No. 3 herein in Closing the matter and holding that the Respondent company implemented the office Memos rightly, without jurisdiction and without application of main and further action of the Respondent Company in seeking to recover the amounts paid to the Members of the petitioner union in stopping of Payment of Industrial Dearness Allowance is illegal, bad, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India, by the issuance of Writ of order or direction essentially in the nature of Writ of Mandamus,

Counsel for the Petitioner:MR.A.NAGENDRA RAO

Counsel for the Respondent No.: MR.M.PANDURANGA RAO

WRIT PETITION NO : 27496 of 1998

Between:

Sponge Iron India Limited,

Rep. by its General Secretary, G.Ram Das, D/o Ramulu,
Karmik Union, Regd.No.E-1638, Afiliated to CITU & SWFI,
Paloncha, Khammam Dist., R/o H.No.F-13, Siill Campus, Paloncha, Khammam Dist.

..... PETITIONER

AND

1 The Sponge Iron India Ltd., Paloncha, Rep. by its Chairman cum Managing Director, Paloncha, Khammam District, Andhra Pradesh.
2 The Sponge Iron India Ltd., Rep. by its Director, Finance, Paloncha, Khammam District, AP.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction under Art.226 of the Constitution of India, particularly one in the nature of Writ of MANDAMUS, declaring the notice issued by the respondent company in REF.No.51/Pers./9143/2021/98, dt.10-9-98 as unjust, arbitrary and illegal after calling for the records and to pass

Counsel for the Petitioner:MR.PRATTIPATI VENKATESWARLU

Counsel for the Respondent No.: MR.M.PANDURANGA RAO

The Court made the following :

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COMMON ORDER:

These two writ petitions are filed questioning the letter issued by the Sponge Iron India Limited by its General Manager (P&A) dated 10th September,1998 wherein the recovery of adhoc amounts already paid between 1-7-1992 and 31-8-1998 in instalments was sought to be made from the month of October,1998.

It is the contention of the petitioners that there was a mistake in calculating the D.A., while fixing the salaries under the revision of pay scales. It is the common affair for all the Public Sector Undertakings under the Central Government. Therefore, the Public Undertakings under the Central Government paid Rs.110/- per month to the workmen with effect from 1992, whenever there was a mistake in calculating the D.A. The H.A.L. of Hyderabad, B.E.M.L of Bangalore and B.E.L.of of Hyderabad and Bangalore also paid to their workmen as Rs.110/- as adhoc amount. The same is sought to be recovered under the impugned proceedings which is contrary to the eligibility of the petitioner's workmen from the scheme evolved by the Central Government.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioners and it is asserted that:

"The respondent company has explained the above position to the employees Unions many times and also during discussions with Commissioner of Labour. The Union without proper appreciation of the clarifications issued by the Govt. resorted to agitational methods to pressurize the management of the respondent-company to accede to their demand. The Union has also issued a strike notice on 29-7-1996. Thereupon the Deputy Commissioner of Labour initiated conciliation proceedings. Meanwhile, the Unions approached the Commissioner of Labour to intervene and resolve the issue. In the meeting with the Labour Commissioner on 16-10-1996 it was agreed to seek clarifications from Government of India on the contentions of the Unions, and pending receipt of the clarifications, it was agreed as suggested by the Labour Commissioner that an amount of Rs.110/- per month should be paid to all workers with effect from 1.7.92, that this amount should not qualify for payment of any allowance and that based on the clarifications this amount should be recovered or adjusted as the case may be. As agreed upon during discussions with the Labour Commissioner, the respondent company had written to the Government of India on 10.12.1996 seeking clarifications on all the points raised by the Union. The Government of India by its Lr.No.2(50)/86-DPE(WC) dated 11.2.97 while advising , the Bangalore based PSEs to adopt the new DA formula for their unionized staff/workers strictly in accordance with the guidelines contained in DPEs Oms dated 19.7.95, 26.7.95 and 29.9.95 stated that the points raised by the Union were already clarified by the DPE in its LR. Dt.5.12.1995 . It is necessary to submit here that in its letter dated 5.12.1995 while reiterating that the system of calculation of quarterly average of AICPI at different quarters as per the wage agreement would be continued and DA payable would be calculated at Rs.2/- per point shift in AICPI up to 1099 and beyond quarterly index average of 1099, DA payable would be calculated as per the new scheme, confirmed that the DA of Rs.58/- on pre-revised method of computation for increase beyond 1099 should be adjusted in the increase of DA on account of calculation on the basis of new DA formula."

It is also further asserted in the counter that the clarifications received from the Government of India and as agreed in the Memorandum of Settlement dated 16-10-1996 under Section 12 (3) of Industrial Disputes Act it was decided to discontinue

the payment of adhoc amount of Rs.110/- with effect from May,1997 and recovery of amount already paid to the employees from 1-7-1992 to 30-4-1997 in 10 equal monthly instalments commencing from the pay bills of 1997 was sought to be made. The Management conveyed the above decision by letter dated 19-5-1997. Thereupon, the recognized union approached the Labour Commissioner and the Labour Commissioner did not agree with the argument of the union. At that stage, they have filed a writ petition before this court in writ petition No.11237 of 1997 which was ultimately dismissed as infructuous and ultimately the Government of India issued a clarification letter only on 11-2-1997 asking everybody to adopt the new DA formula for their unionized staff/workers strictly in accordance with the guidelines contained in DPE's O.Ms dated 19-7-1995, 26-7-1995 and 29-9-1995. It was also further asserted that the Labour Commissioner on 23-8-1997 written to the Government of India seeking clarification in the matter of dispute. The Government of India by its OM dated 12-9-1997 has clarified that the D.A. was at the rate of Rs.58/- on pre-revised method of computation for increase beyond 1099 should be adjusted in the increase of DA on account of calculation on the basis of new DA formula. Therefore, the writ petition is devoid of merit and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also gone through the material made available on record.

At the outset I am of the opinion that in this writ petition except the dispute as to the method of calculation, there is no substantial question of law falls for consideration. In the impugned order dated 10th September, 1998 itself, it has been categorically made clear that in view of the clarifications issued by the Government of India dated 12-9-1997 and also in view of the proceedings of the Joint Commissioner of Labour, Government of Andhra Pradesh dated 26-8-1998, the payment of adhoc amount i.e. Rs.110/- has been discontinued and recovery of excess amount paid was sought to be recovered for the relevant period. Further there is no dispute as to the settlement between the parties under Section 12(3) of Industrial Disputes Act dated 16-10-1996, wherein it is stated as under:

> *"a)An amount of Rs.110/- per month will be paid to all the Non-executive employees w.e.f. 1st July,1992.*

b)This amount will be treated as an adhoc payment which does not qualify for payment of any allowance thereon.

c)Any amount that will become either recoverable out of Rs.110/- or payable to the employees over and above Rs.110/-based on the clarification from the Government would be recovered or paid after adjusting the amount of Rs.110/- now agreed to be paid."

Thereafter, there is no dispute that the Government of India issued clarifications stating that what has been clarified earlier in 1995-96 holds good and no further clarification is necessary. Therefore, in view of the settlement under Section 12 (3) of Industrial Disputes Act, dated 16-10-1996, there was no option for the Management except to discontinue the said payment of adhoc DA of Rs.110/- per month and also to recover the excess amount paid between 1-7-1992 and 31-8-1998 on instalment basis. In view of the above actual position which is not disputed by either of parties, there is no substantial question of law that falls for consideration in these writ petitions.

However, the learned counsel for the petitioners states that the dispute is as to the method of calculation of the payment of DA and also the recovery sought to be made by the Management. Therefore, the petitioner may be permitted to approach the labour court.

In view of the same, these two writ petitions are disposed of with a direction to the petitioners to approach the appropriate forum to work out their remedies as available under law within a period of three weeks from today by filing an application and on filing such application, the appropriate forum shall entertain the same and dispose of the matter within a period of six months from the date of receipt of such application filed by the petitioners. Till disposal of such application, the impugned order dated 10-09-1998 shall not be given effect.

With the above direction, both the writ petitions are disposed of. No order as to costs.

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C.V.RAMULU,J

28-6-2005

Note: Copy in one week.

B/o.

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1 .The Secretary, Union Of India, Ministry of Indistry, Department of Public Enterproses,14, Central Government offices Complex, Lodhi Road, New Delhi.
2 .The Deputy Director (S), Department of pulic Enterprises, 14, Central Government offices Complex, Lodhi Road,New Delhi.

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AP.

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